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STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM J. TRICE,

Plaintiff-Appellee,

v

MICHAEL STEVEN CREMONTE and ROSEVILLE COMMUNITY SCHOOLS,

Defendants-Appellants,

and

AMERICAN ECONOMY INSURANCE COMPANY,

Defendant.

UNPUBLISHED
October 09, 2026
9:26 AM

No. 376427
Macomb Circuit Court
LC No. 2024-003377-NI

Before: GADOLA, C.J., and O'BRIEN and MARIANI, JJ.

PER CURIAM.

Defendants, Michael Steven Cremonte and Roseville Community Schools (RCS), appeal as of right the trial court's order denying their motion for summary disposition under MCR 2.116(C)(7). We affirm.

I. BACKGROUND

Plaintiff filed the complaint giving rise to this action on August 26, 2024. As relevant to this appeal, "Count I" of plaintiff's complaint alleged that plaintiff was driving on Groesbeck Highway when Cremonte, who was driving a van owned by RCS on the opposite side of the highway, crossed the center of the highway, entered plaintiff's lane of travel, and collided head on with plaintiff's vehicle, causing injury. The complaint further alleged that, at the time of the collision, Cremonte was employed by RCS and was driving the van in the course of his employment. The relevant count of the complaint ended by alleging that plaintiff's injuries were

caused by Cremonte's "reckless and grossly negligent and unlawful conduct," and asked that Cremonte and RCS be found liable for plaintiff's injuries.

On May 28, 2025, defendants moved for summary disposition under MCR 2.116(C)(7), arguing that "Defendants [were] entitled to governmental immunity under MCL 691.1407 for the reason that Plaintiff failed to plead an exception to governmental immunity in his Complaint as required by Michigan law." This was so, defendants argued, because plaintiff's complaint "makes no mention of governmental immunity or its exceptions." Defendants further argued that plaintiffs' claim against Cremonte stated only a claim of ordinary negligence, which was "not sufficient to establish a claim of gross negligence against a governmental employee."

In response, plaintiff argued that his complaint clearly pleaded facts in avoidance of governmental immunity. The complaint alleged that Cremonte, during the course of his employment with RCS, was grossly negligent in his operation of a motor vehicle owned by RCS, which caused injuries to plaintiff. The complaint also detailed the factual basis for Cremonte's gross negligence—the complaint alleged that Cremonte drove RCS's van across the center lane of Groesbeck Highway such that he was going south in the northbound lane. In addition, plaintiff's response provided further details of the collision, which plaintiff supported with the traffic crash report of the collision. That report, plaintiff recounted, detailed how Cremonte drifted across the center lane of Groesbeck Highway into traffic going the opposite direction, then collided with multiple other motor vehicles until colliding with plaintiff's vehicle and "coming to rest on top" of plaintiff's vehicle. These facts, plaintiff contended, sufficiently established that (1) Cremonte was grossly negligent and could thus not avoid liability by application of MCL 691.1407(2), and (2) RCS was liable under MCL 691.1405 (the motor-vehicle exception to governmental immunity).

Following a hearing, the trial court issued a written opinion and order in which the court denied defendants' motion. This appeal followed.

II. STANDARD OF REVIEW

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 506; 885 NW2d 861 (2016). Defendants moved for summary disposition under MCR 2.116(C)(7). A (C)(7) motion may be properly granted if a claim is barred by "immunity granted by law." MCR 2.116(C)(7). Courts reviewing a motion filed under (C)(7) "must accept all well pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). That other evidence can include affidavits, depositions, admissions, or other documentary evidence, and when such other evidence is submitted, "the court must consider [it] to determine whether there is a genuine issue of material fact." *Id*. at 429. "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court." *Id*.

III. RCS

Beginning with defendants' argument as it relates to RCS, there is no dispute that RCS, as a public school, is a governmental agency, and that RCS was engaged in the exercise or discharge

of a governmental function at the time of plaintiff's injuries, such that RCS was entitled to governmental immunity absent an exception. See MCL 691.1407(1) (stating that governmental agencies are "immune from tort liability" if "engaged in the exercise or discharge of a governmental function" unless an exception to that immunity applies).

Governmental immunity is "a characteristic of government," so, when suing the government, a "plaintiff must plead her case in avoidance of immunity." *Mack v City of Detroit*, 467 Mich 186, 198; 649 NW2d 47 (2002). "A plaintiff pleads in avoidance of governmental immunity by stating a claim that fits within a statutory exception or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function." *Id*. at 204. Stated more succinctly, "a plaintiff must plead facts in avoidance of immunity." *Id*. at 198.

Concerning pleading requirements in general, "Michigan is a notice-pleading state." *Johnson v QFD, Inc*, 292 Mich App 359, 368; 807 NW2d 719 (2011). A pleading's "primary function" is to provide notice of the nature of the claim sufficient to allow the opposing party to take a responsive position. *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 305; 788 NW2d 679 (2010) (quotation marks and citation omitted). This is reflected in MCR 2.111(B)(1), which provides that a complaint must contain "[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend."[1]

With respect to RCS, plaintiff's complaint alleged that plaintiff was injured as a result of Cremonte's negligent or grossly negligent operation of a van owned by RCS during the course of Cremonte's employment with RCS. The complaint further laid out the facts underlying this claim—that Cremonte, while driving a vehicle owned by RCS during the course of his employment, was driving southbound on Groesbeck Highway when he crossed into the northbound lane of travel and collided with plaintiff's vehicle, causing injury to plaintiff. These facts plainly alleged a cause of action falling into the motor-vehicle exception to governmental immunity in MCL 691.1405, which provides:

> Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

Defendants' arguments against this obvious result are spurious. Defendants do not engage with the facts alleged in plaintiff's complaint but focus instead on what is supposedly missing from the complaint—any mention of the GTLA, governmental immunity, or a host of words and

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[1] Contrary to defendant's argument, *Mack* did not create a "higher pleading standard" for suits against governmental agencies. *Mack* held that, because governmental immunity is a characteristic of government, a government defendant does not need to raise governmental immunity as an affirmative defense; the plaintiff instead must plead in avoidance of governmental immunity.

phrases.[2] But defendants cite no caselaw supporting their contention that plaintiff's complaint needed to use some combination of these "magic words" to plead his claim in avoidance of governmental immunity. This, presumably, is because requiring the use of specific words or phrases to state a claim would be inconsistent with Michigan's general pleading requirements.

With respect to those pleading requirements, defendants argue in their reply brief that, while MCR 2.111(B)(1) only requires a statement of facts, "MCR 2.112(H) provides that when an action is pled under a statute, identification of the statute is necessary while the substance of said statute need not be stated." That is not what MCR 2.112(H) says. What that court rule says is, "In pleading a statute, ordinance, or municipal charter, it is sufficient to identify it, without stating its substance, except as provided in subrule (M)." MCR 2.112(H).[3] Clearly, the rule does not state that "identification of the statute is necessary," as defendants contend.[4]

IV. CREMONTE

Turning to plaintiff's claim against Cremonte, the parties agree that Cremonte would be entitled to immunity if the conditions of MCL 691.1407(2) are met. That statute provides that a government employee acting in the course of their employment "is immune from tort liability" if (1) the employee was "acting or reasonably believes he or she is acting within the scope of his or her authority"; (2) "[t]he governmental agency is engaged in the exercise or discharge of a governmental function"; and (3) the employee's "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2). The parties only dispute the third condition—whether Cremonte's conduct was grossly negligent. " 'Gross negligence' means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a).

The requirement to plead in avoidance of governmental immunity does not extend to governmental employees. This means that, while "[a] plaintiff filing suit against a governmental agency must initially plead his claims in avoidance of governmental immunity," "the burden

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[2] Defendants emphasize that plaintiff's "Complaint is completely devoid of the words 'government', 'governmental', 'immunity' and 'exception,' " as well as the phrases "governmental entity," "government employee," "governmental function," and "governmental immunity."

[3] MCR 2.112(M) concerns the requirements for pleading a Headlee Amendment Action.

[4] Nor does it appear identification of the statute is required. As this Court has explained, "The fact that the plaintiff failed to plead a statute in the original proceeding does not bar reliance on the statute by the trial court" because courts can "take judicial notice of public statutes." *Roe v Flamegas Indus Corp*, 16 Mich App 210, 212; 167 NW2d 835 (1969). This case was decided before our current rules were enacted, but our court rules now allow a trial court discretion to sua sponte take judicial notice of Michigan statutes, see MRE 202(a), and require courts to take judicial notice of Michigan statutes in certain circumstances, see MRE 202(b). It thus appears that it is still the case that a plaintiff's failure to plead a statute in their complaint does not bar reliance on the statute.

continues to fall on the governmental employee to raise and prove his entitlement to immunity as an affirmative defense." *Odom v Wayne Co*, 482 Mich 459, 478-479; 760 NW2d 217 (2008).

This is significant because defendants brought their motion solely under MCR 2.116(C)(7). Under that subrule, courts are to consider not only the allegations in the complaint, but other evidence submitted in support of the motion. See *Dextrom*, 287 Mich App at 428. This provides that, while defendants could argue that plaintiff's complaint failed to sufficiently allege gross negligence, plaintiff was free to provide further evidence in support of that claim, which he did.

In response to defendants' motion for summary disposition, plaintiff attached the traffic crash report describing the collision involving plaintiff and Cremonte. That report detailed how Cremonte drifted across the center lane of Groesbeck Highway into traffic going the opposite direction, then collided with multiple other motor vehicles until colliding with the front of plaintiff's vehicle and coming to rest on top of plaintiff's vehicle. Viewing this evidence in the light most favorable to plaintiff, a reasonable juror could find that Cremonte's conduct of drifting into oncoming traffic and colliding with multiple vehicles was so reckless as to demonstrate a substantial lack of concern for whether an injury results. That is, viewing the evidence in the record in the light most favorable to plaintiff, a reasonable juror could find that Cremonte's conduct was grossly negligent, accordingly there is a genuine issue of material fact whether he is entitled to tort immunity under MCL 691.1407(2).

Defendants' arguments on appeal focus entirely on plaintiff's complaint. But defendants did not bring their motion for summary disposition under MCR 2.116(C)(8), which considers whether a plaintiff's complaint states a claim on which relief can be granted. Defendants instead brought their motion under (C)(7), and this Cout's review of a (C)(7) motion is not limited to the allegations (or lack of allegations) in the complaint. See *Dextrom*, 287 Mich App at 428. Because defendants' entire argument is that plaintiff's claims against Cremonte must be dismissed due to defects in plaintiff's complaint, defendants' argument is misplaced and does not warrant relief. That is especially so because, for the reasons explained, plaintiff has come forth with evidence tending to establish a genuine issue of material fact whether Cremonte was grossly negligent, hence there exists a genuine issue of material fact whether Cremonte is entitled to immunity under MCL 691.1407(2).[5]

Affirmed.

/s/ Michael F. Gadola
/s/ Colleen A. O'Brien
/s/ Philip P. Mariani

[5] For the first time on appeal, defendants argue that plaintiff's complaint fails to allege that Cremonte's gross negligence was "the proximate cause" of plaintiff's injuries. This argument is unpreserved, so we decline to consider it.